

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SCOTT ALLEN RUBIN,

Defendant.

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CR. 09-40053

REPORT AND RECOMMENDATION
ON DEFENDANT'S CHANGE
OF PLEA

This matter came before the court for a change of plea hearing on Friday, February 26, 2010. The Defendant, Scott Allen Rubin, appeared in person and by his counsel, Assistant Federal Public Defender Tim Langley, while the United States appeared by its Assistant United States Attorney, Jeff Clapper.

The defendant consented in open court to the change of plea before a United States magistrate judge. This court finds that the defendant's consent was voluntary and upon the advice of counsel. The government also consented to the plea hearing before a magistrate judge.

Defendant has reached a plea agreement with the government where he intends to plead guilty to Count 2 of the Indictment which charges him with Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). At the hearing, the defendant was advised of the nature of the charges to which the defendant would plead guilty and the maximum penalties applicable, specifically: 10 years imprisonment; a \$250,000 fine; or both; minimum 5 years supervised release and up to a life term of supervised release; an additional term of imprisonment if supervised release is revoked; a \$100 special assessment; and restitution. Further, the defendant has consented to the forfeiture of certain computer equipment.

Upon questioning the defendant personally in open court, it is the finding of the court that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that his plea of guilty to Count 2 of the Indictment is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. Defendant's guilty plea is accepted and it is my report and recommendation that he be adjudged guilty of that offense.

Upon imposition of sentence, the government will move to dismiss Count 1 of the Indictment.

NOTICE TO PARTIES

The parties have fourteen (14) days after service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require de novo review by the District Court. Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990); Nash v. Black, 781 F.2d 665 (8th Cir. 1986).

Dated this 26th day of February, 2010.

BY THE COURT:

s/John E. Simko

John E. Simko
United States Magistrate Judge